

REMARKS

1. **STATUS OF THE CLAIMS**

Claims 1, 3, 6-23 and 25-33 are pending.

2. **RESTRICTION**

The Examiner restricted the claims into the following three **Groups**,¹ stating that “all claims are **generic**.”²

1. **Group I:** Claims 1 and 3, drawn to a method of identifying a test agent capable of reducing macrophage apoptosis involving protein kinase R,
2. **Group II:** Claims 6-16, drawn to a method of reducing macrophage apoptosis involving protein kinase R, and
3. **Group III:** Claims 17-23, 25, and 27-33, drawn to a method of reducing symptoms of or treating infection by a microbe by administering a protein kinase R inhibitor.

The Examiner additionally restricted each of the above groups into the following **species** of “various micro-organisms (see claims 8, 11, 13, 14, 16, 20, 21, 30, and 31).”³

3. **ELECTION**

Applicants note that the Examiner **did not list the microorganism species**. This violates the MPEP’s directive that “[t]he Examiner **must** provide a clear and detailed record of the restriction requirement to provide a clear demarcation between restricted inventions”⁴ for restricted species as set forth in MPEP 809.02(a), for inventions other than species as set forth in MPEP 814 and 817, and for linking claims (*i.e.*, genus claims and subcombination claims) as set forth in MPEP 814 and 809.

In view of the inadequacy of the Examiner’s description of the restricted species, Applicants believe, but are not sure, that the Examiner intended the species of microorganism to mean: *Yersinia species*, *Salmonella typhimurium*, *Haemophilus influenza*, *B. anthracis*, *Influenza*

¹ Office Action, page 2, item 1.

² (Emphasis added) Office Action, page 4, 3rd paragraph.

³ Office Action, page 3, last paragraph.

⁴ (Emphasis added) MPEP 814.

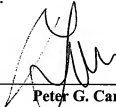
virus, Shigella species, Streptococcus species and Haemophilus species, Influenzavirus A, Influenzavirus B, Influenzavirus C., Bacillus species, and Salmonella species.

Based on Applicants' belief, and in order to expedite prosecution by being fully responsive to the instant Office Action, Applicants elect **Group I** and the species of "***Salmonella species***," as recited in Claims 20 and 30, without traverse.

4. **REQUEST REJOINDER OF SPECIES**

Applicants respectfully request rejoinder and consideration, upon allowance of a **generic** claim, of non-elected **species** claims that depend from or requires all the limitations of the allowable **linking genus claims**, as provided by 37 CFR § 1.141 and MPEP 809,⁵ including any claims that may have been previously withdrawn from consideration. The Examiner's statements concede Applicants' right to rejoinder.⁶

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⁵ "... linking claims which, if allowable, act to prevent restriction between inventions that can otherwise be shown to be divisible, are (A) genus claims linking species claims; and (B) subcombination claims linking plural combinations." MPEP 809. Also, "Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or requires all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability." MPEP 809.

⁶ Office Action, page 4, first paragraph.